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H. R. 1317

To revise current Federal law and procedure to provide consumers with comprehensive and accurate statistical information about franchising and franchise practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. LAFALCE introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Post Office and Civil Service

A BILL

To revise current Federal law and procedure to provide consumers with comprehensive and accurate statistical information about franchising and franchise practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Franchise
5 Data and Public Information Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) The Congress makes the following findings:

1 (1) Franchise business relationships represent a
2 large and growing segment of the Nation's retail and
3 service businesses and are replacing more traditional
4 forms of small business ownership in the American
5 economy.

6 (2) Despite the growing importance of franchis-
7 ing in the American marketplace, there is little ob-
8 jective or reliable statistical information available to
9 the public on the number, ownership, and operation
10 of franchise businesses; and broad-based, objective
11 data or investigations of franchise failures are vir-
12 tually non-existent.

13 (3) While there is a void of reliable statistics,
14 a large amount of statistical information is routinely
15 provided in articles and talks about franchising and
16 in promotional material for franchise opportunities
17 that seek to represent franchises as uniformly suc-
18 cessful and virtually risk free.

19 (4) Inaccurate or misleading statistical informa-
20 tion is routinely attributed to Federal Government
21 agencies and reports, and data on franchise business
22 compiled prior to 1987 by the United States Depart-
23 ment of Commerce continue to be widely cited, mis-
24 represented or misused.

1 (5) Franchisees may suffer substantial losses
2 from investment in a franchise business without ac-
3 curate or reliable information or with expectations
4 based on false or misleading statistical information
5 regarding the operation and success of franchise
6 businesses.

7 (b) It is the purpose of this Act to provide the public
8 with comprehensive statistical information about franchis-
9 ing and the performance of franchise systems, to enhance
10 the reliability of information made available to the public
11 regarding franchise practices, and to assure that prospec-
12 tive investors have the information necessary to make an
13 informed decision on whether to invest in a franchise busi-
14 ness.

15 **SEC. 3. NATIONAL FILING AND DATA COLLECTION.**

16 (a) Filing of Franchise Disclosure Documents—

17 (1) All persons, partnerships or corporations
18 engaged in selling or offering for sale any franchise,
19 or any relationship which is represented either orally
20 or in writing to be a franchise, whether within a
21 state or in interstate commerce, shall file with the
22 United States Department of Commerce (hereafter,
23 the “Commerce Department”) a copy of the fran-
24 chise disclosure document or circular for such fran-
25 chise; and

1 (2) The disclosure document or circular to be
2 filed under this subsection shall be:

3 (A) the most recent version of such docu-
4 ment or circular which incorporates information
5 that is current as of the close of the
6 franchisor's most recent fiscal year; and

7 (B) the most restrictive version of such
8 document or circular, and of the franchise
9 agreement, provided by the franchisor to any
10 prospective franchisee, in terms of the require-
11 ments imposed on franchisees and the limita-
12 tions on the rights and remedies available to
13 franchisees in the franchise agreement;

14 (3) The disclosure document or circular de-
15 scribed in paragraph (2) shall be filed annually at a
16 time and in a manner set forth in regulation by the
17 Commerce Department;

18 (4) The Commerce Department shall make
19 available to the Congress, the Federal Trade Com-
20 mission and other Federal agencies, as requested,
21 copies of any disclosure documents filed under this
22 subsection, and shall establish procedures under
23 which such documents may be viewed by the public;
24 and

1 (5) It shall be unlawful for a franchisor,
2 subfranchisor or franchise broker to make any state-
3 ment or reference in connection with any advertise-
4 ment or disclosure document, or in any oral or writ-
5 ten statement or other representation to a prospec-
6 tive franchisee, that a disclosure document has been
7 filed with the Commerce Department, or to make
8 any statement or representation that suggests or im-
9 plies that the Commerce Department or an other
10 Federal agency has in any way reviewed the content
11 of the disclosure document, made any finding with
12 regard to the content of such document, or has in
13 any way passed upon the merits of, or given ap-
14 proval to, the franchise opportunity.

15 (b) Data Collection and Publication—

16 (1) The Commerce Department shall, not later
17 than two hundred and forty days after the date of
18 enactment of this section, establish procedures for
19 the compilation, analysis and publication of statis-
20 tical information on franchise ownership and na-
21 tional franchising practices. For purposes of such
22 procedures, the Commerce Department shall:

23 (A) use as the principal source of statis-
24 tical information on franchise ownership and
25 practices the disclosure documents for franchise

opportunities required to be filed annually under subsection (a);

(B) establish categories of statistical information for annual data compilation and analysis, including but not limited to: total numbers of franchisors and franchise businesses, types of franchise businesses, number of foreign franchisors, annual growth in franchisors and franchise businesses, turnover in franchise ownership and numbers of franchise failures;

(C) consult with Congress, the Federal Trade Commission, the North American Securities Administrators Association and other interested organizations in identifying additional categories of statistical information for purposes of data compilation and analysis that:

(i) involve issues or information of potential interest to the public, or of specific concern to Federal and State regulatory agencies; and

(ii) are obtainable from disclosure materials filed in accordance with subsection (a) and from other public sources of information; and

1 (D) initiate periodic questionnaires of
2 franchisors or franchisees to obtain statistical
3 information to supplement information obtain-
4 able in disclosure documents filed under sub-
5 section (a), or information in connection with
6 topics or categories of statistical information
7 identified under paragraph (C) for which addi-
8 tional sources of information may be required,
9 except that no information obtained from such
10 questionnaires may be used in lieu of informa-
11 tion otherwise obtainable in a disclosure docu-
12 ment filed under subsection (a) of this section
13 or in data available in the Business Census pur-
14 suant to section 4 of this Act.

15 (2) The Commerce Department shall, not later
16 than eighteen months after the date of enactment of
17 this section, and then not less than annually there-
18 after, publish a report on the information and find-
19 ings relating to franchise ownership and national
20 franchising practices required to be complied under
21 this subsection. Such report shall be transmitted to
22 the appropriate Committees of the Congress and
23 shall be made available to the public through the Su-
24 perintendent of Documents.

1 **SEC. 4. CENSUS DATA ON FRANCHISE BUSINESSES.**

2 (a) The Bureau of the Census of the Department of
3 Commerce (hereafter, the “Bureau of the Census”) shall
4 include in its Business Census for 1997, and in each such
5 succeeding census, statistical information on the number,
6 ownership and operation of franchise businesses.

7 (b) The Bureau of the Census shall—

8 (1) consult with the Federal Trade Commission
9 to establish criteria and procedures to identify fran-
10 chise businesses to be included in the Business Cen-
11 sus; and

12 (2) consult with the Congress, the Federal
13 Trade Commission and other interested organiza-
14 tions in establishing categories of statistical informa-
15 tion to be collected in the Business Census relating
16 to the number, ownership and operation of franchise
17 businesses.

18 (c) Not later than two hundred and eighty days after
19 the date of enactment of this section, the Bureau of Cen-
20 sus shall submit a report to the Congress which shall de-
21 scribe the most cost effective and accurate means to gath-
22 er and present the statistical information required to be
23 collected pursuant to this section and identify the cat-
24 egories of data relating to franchise businesses to be in-
25 cluded in the Business Census.

1 **SEC. 5. RULES, REGULATIONS AND FEES.**

2 (a) The Secretary of Commerce (hereafter, the “Sec-
3 retary”) is authorized to make such rules and regulations
4 as are necessary and appropriate to implement the provi-
5 sions of this Act. Any rules, regulations, or orders issued
6 pursuant to this authority may be established in such form
7 or manner, may contain such classifications or differentia-
8 tions, and may provide for such adjustments and reason-
9 able exceptions as in the judgement of the Secretary are
10 necessary or proper to effectuate the purposes of this Act,
11 or to prevent circumvention or evasion of any rule, regula-
12 tion, or order issued hereunder.

13 (b) The Secretary is further authorized to collect a
14 filing fee or other reasonable charge from any person,
15 partnership or corporation subject to the filing require-
16 ment of section 3(a) of this Act for purposes of defraying
17 costs incurred by the Commerce Department in connection
18 with such filing.

19 **SEC. 6. DEFINITIONS.**

20 For purposes of this Act:

21 (1) The term “advertisement” means a commu-
22 nication circulated generally by mail, or print media
23 or electronic media, or otherwise disseminated gen-
24 erally to the public, in connection with an offer or
25 sale of a franchise.

1 (2) The term “disclosure document” means ei-
2 ther the disclosure statement required by the Com-
3 mission in Trade Regulation Rule 436 (16 CFR
4 436) as it may be amended, or an offering circular
5 prepared in accordance with Uniform Franchise Of-
6 fering Circular guidelines as adopted and amended
7 by the North American Securities Administrators
8 Association, Inc., or its successor.

9 (3) The term “franchise” means—

10 (A) any continuing commercial relationship
11 created by a contract or agreement, whether ex-
12 press or implied, oral or written, where—

13 (i) one person (the franchisor) grants
14 to another person (the franchisee) the
15 right to engage in the business of offering,
16 selling or distributing goods or services, in
17 which—

18 (a) the goods or services offered,
19 sold or distributed by the franchisee
20 are substantially associated with the
21 trademark, service mark, trade name,
22 logotype, advertising, or other com-
23 mercial symbol owned or used by the
24 franchisor; or

1 (b) the franchisee must conform
2 to quality standards established by
3 the franchisor for the goods or serv-
4 ices to be offered, sold or distributed,
5 and operate under a name that in-
6 cludes, in whole or in part, the
7 franchisor's trademark, service mark,
8 trade name, logotype, advertising, or
9 other commercial symbol;

10 (ii) the franchisor—

11 (a) communicates to the
12 franchisee knowledge, experience, ex-
13 pertise, knowhow, trade secrets or
14 other non-patented information, re-
15 gardless of whether it is proprietary
16 or confidential;

17 (b) provides significant assistance
18 in the franchisee's method of oper-
19 ation; or

20 (c) exercise significant controls
21 over the franchisee's method of oper-
22 ation of the business; and

23 (iii) the franchisee, as a condition for
24 obtaining or commencing operation of a
25 franchise, is required to make, or to com-

1 mit to make, payment or other consider-
2 ation to the franchisor, or an affiliate of
3 the franchisor, other than payment for
4 commercially reasonable quantities of
5 goods for resale at a bona fide wholesale
6 price.

7 (B) a subfranchise; or

8 (C) any commercial relationship entered
9 into in reasonable reliance on representations,
10 whether oral or written, that the criteria of sub-
11 section (A) will be met.

12 (4) The term “franchisee” means a person to
13 whom a franchise is granted.

14 (5) The term “franchisor” means a person who
15 grants a franchise or a subfranchise.

16 (6) The term “person” means a natural person
17 or any legal entity recognized in law.

18 (7) The term “subfranchise” means a contract
19 or an agreement by which a person pays a
20 franchisor for the right to sell, offer for sale or ar-
21 range the sale of franchises, or to provide goods or
22 services to franchisees.

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